

# Housing Resource Manual

## **PART 5: FINANCIAL PLANNING FOR A FAMILY MEMBER WITH A DISABILITY**

Many families with a member who is disabled wish to provide long-term housing assistance to these individuals without jeopardizing their ability to receive public assistance. Families are concerned their adult loved ones with disabilities be able to live as independently as possible and in a setting that incorporates the least institutional and most homelike environment. In many cases, families have accumulated some resources that they might use to benefit their loved ones, either now or at some point in the future.



The unique circumstances of your family, the type and amount of assets available, and the goals you are trying to achieve, require legal and financial assistance and consultation. There are a number of different strategies a family might use to assist loved ones with disabilities. This entire section represents some of the more common practices available and should be considered as only a guide outlining some of the options that may be available to you and your family to explore further. Some additional resources may be found in Appendix F.

### **A. General Financial Information**

Which of the strategies or combinations of strategies you pursue depends on your family's unique situation. Some examples of how families may be able to assist their disabled loved ones include:

- purchasing a house outright, or making a lump sum payment to help reduce the mortgage amount, on behalf of a person with a disability;
- a family member making a gift of up to \$10,000 per year to a disabled person. Typically the disabled individual does not have to report this gift as income to the IRS however they may have to report this to existing subsidy program coordinators or the State;
- bequeathing money or property (through a will or trust) to a disabled person;

Protection of the right to receive public assistance is critical, but there are other issues as well. These include the following:

- ensuring the house or apartment is maintained over time;
- obtaining assistance in managing money that is bequeathed or gifted outright;
- ensuring that people with disabilities living independently (whether as renters or owners) receive services that will allow them to remain there (such as help with shopping, cooking, recreation, transportation to medical appointments, etc.); and
- making sure any rent or mortgage payment, property taxes, and homeowners insurance are paid when needed, and that support is available to prevent individuals from losing their housing in the event of a crisis or hospitalization.

### **B. Homeownership and Financial Planning**

If homeownership is desired, one question that needs to be answered is who will hold title to the house. Again, legal and financial consultation is absolutely necessary when making any major financial decision, particularly a home purchase. You may also wish to contact the Estate Recovery Unit of the Department of Human Services. Some options that may be available to you or your family are:

#### 1. Sole or Joint Ownership

The family member with a disability may hold title to the house s/he lives in without affecting his/her right to receive public assistance. Ownership may be by the individual or jointly with one or more other people. Benefits to this approach include the ability to live in and control the property for as long as it is owned. Potential drawbacks are the same as they would be for any other homeowner (the house must be maintained, taxes and insurance paid, and the house is subject to claims from creditors) with one important addition for a person receiving Medicaid. That is that the house may have to be sold, in the event of his/her death, to reimburse Medicaid for the cost of providing care to the individual. This may happen if the property were owned solely by the individual with no other (surviving) owner or dependents.

#### 2. Ownership by a Conservator or Guardian

The house may also be held by a Conservator or Guardian, who has been appointed by the court to act on behalf of a disabled person. A home held by a Conservator or Guardian may be subject to claims from the individual's creditors. Medicaid may also claim the property after the death of the person with a disability to recover the cost of care.

#### 3. Trustee

A Trustee is a person (or it can be a bank or trust company) named in a legal document called a trust to manage property in the trust for someone's benefit. A trust is a private agreement and, in most cases, a court is not involved in the activities of the Trustee. A trust may be revocable, meaning that it may be amended or even terminated by the person who creates it. It may also be irrevocable, meaning that once created, the terms cannot generally be changed.

A Trustee can hold property for the benefit of a person with a disability, and the trust document would say who is entitled to the property if the person dies or is unable to live there. The Trustee may also be authorized to transfer or sell the property when it becomes necessary.

### **C. Trusts**

A trust is a legal document that is designed to provide an interest in property that is held by one party for the benefit of another. A trust may or may not protect property from Medicaid reimbursement claims. There are several types and varieties of trusts. Consult your legal representative to see if a trust is appropriate for your situation.



Any questions concerning Medicaid's possible claim against an interest in a home held by a Medicaid recipient should be directed to the Medicaid Estate Recovery Unit at the Maine Department of Human Services and your own legal and financial professional representatives. See Appendices B and E for more information.



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